Supreme Court, U.S.
FILED
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(2)

No. 01-1167

In The Supreme Court of the United States

LESLIE WOOLRIDGE,
Petitioner,
v.
HAMILTON COUNTY, OHIO DEPARTMENT OF HUMAN SERVICES,
Respondent.

Petition For A Writ Of Certiorari To The Ohio Supreme Court

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

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March, 2002

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SUMMARY OF ARGUMENT

The decision below was in accordance with Ohio law and applicable federal law regarding the termination of parental rights in cases of dependency, neglect, and abuse. There is no question of law at issue that justifies the grant of writ of certiorari here.

ARGUMENT

Petitioner's current petition before the Court reiterates the arguments raised in her previous petition docketed on August 7, 2001. The Court denied a writ of certiorari for this previous petition on October 9, 2001. Petitioner, in the interim, filed applications under Ohio App. R. 26(A) and (B) to reconsider and reopen of the court of appeals decision that led to Petitioner's first appeal to the Ohio Supreme Court and the subsequent petition before this Court. The applications rested, in essence, on the Ohio statute for the reopening of criminal appeals. The court of appeals denied the applications on August 7, 2001. On October 24, 2001, the Ohio Supreme Court dismissed Petitioner's appeal of the matter. Petitioner's arguments in this case raise two issues – double jeopardy and ineffective assistance of counsel. Once again, Petitioner raises these issues regarding prior counsel's failure to argue double jeopardy considerations in a civil case and prior counsel's incorrect account of the time Petitioner had to file her first appeal to the Ohio Supreme Court. Petitioner's current argument regarding effective assistance of

appellate counsel raises nothing new and is meritless.

The Ohio Supreme Court properly dismissed Petitioner's appeal of the denial of her applications for delayed reconsideration and reopening. Ohio App. R. 26(A) and (B) provide:

> (A) Application for reconsideration. Application for reconsideration of any cause or motion submitted on appeal shall be made in writing before the judgment or order of the court has been approved by the court and filed by the court with the clerk for journalization or within ten days after the announcement of the court's decision, whichever is the later...
>
> (B) Application for reopening. (1) A defendant in a criminal case may apply for reopening of the appeal from the judgment of conviction and sentence, based on a claim of ineffective assistance of appellate counsel. An application for reopening shall be filed in the court of appeals where the appeal was decided within ninety days from journalization of the appellate judgment unless the applicant shows good cause for filing at a later time.

The court of appeals had noted that, contrary to App. R. 26(A), Petitioner filed her application to reconsider almost six months after the time the judgment in her appeal had been journalized. Next, the court of appeals had noted that App. R. 26(B) applies only in criminal cases.

Petitioner's applications for delayed reconsideration

and reopening raised ineffective assistance of counsel, pointing out that a letter from prior counsel incorrectly stated she had forty-five days to appeal the court of appeals decision affirming the trial court's termination of her parental rights. However, under *Strickland v.Washington*, 466 U.S. 668 (1984), claims of ineffective assistance require a defendant to " ...show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland* at 694. Petitioner in effect argues states that prior counsel's error was the sole reason for the dismissal of her first appeal to the OhioSupreme Court. However, the Ohio Supreme Court dismissed Petitioner's first appeal for failure to comply with S. Ct. Prac. R. II, Sec. (2)(B)(1)(d), which provides:

B) Contents of Notice of Appeal.

(1) The notice of appeal shall state ...

(d) That one or more of the following are applicable:

(i) The case involves affirmance of the death penalty;

(ii) The case originated in the court of appeals;

(iii) The case raises a substantial constitutional question;

(iv) The case involves a felony;

(v) The case is one of public or great general interest;

(vi) The case involves termination of parental

rights or adoption of a minor child, or both; ...

Petitioner's notice of appeal failed to state that the case involved the termination of parental rights and stated only that the case raised a substantial constitutional question and was one of public or great general interest. Petitioner's failure to comply with Prac. R. II, Sec. 2(B)(1)(d) was unrelated to any purported ineffective assistance of counsel raised in this Petition. The responsibility for complying with Prac. R. II, Sec. 2(B)(1)(d) rested upon current counsel.

Petitioner's applications for delayed reconsideration and reopening included an affidavit stating that on January 26, 2001, after contacting new counsel, Petitioner discovered prior counsel's error as to the time she had to appeal the decision affirming the trial court's termination of her parental rights.

S. Ct. Prac. R. II, Sec. 2(A)(1)(a) provides:

> Section 2. Institution of Appeal from Court of Appeals.
>
> (A) Perfection of Appeal.
>
> (1)(a) To perfect an appeal from a court of appeals to the Supreme Court, other than in a certified conflict case (which is addressed in S. Ct. Prac. R. IV), the appellant shall file a notice of appeal in

> the Supreme Court within 45 days from the entry of the judgment being appealed.

If the appeal involves termination of parental rights or adoption of a minor child, or both, the appellant shall file the notice of appeal in the Supreme Court within 20 days from the entry of the judgment being appealed. ...

To comply with Prac. R. II (2)(A)(1)(a), Petitioner needed to file her initial notice of appeal by January 9, 2001. Petitioner's affidavit failed to indicate when she first contacted new counsel and whether she did so soon enough to file a timely appeal. Assuming Appellant first contacted new counsel on January 26, 2001, why she waited to do so until only ten days were left to file an appeal within forty-five days bears some consideration.

Underlying Petitioner's argument as to ineffective assistance of appellate counsel is the notion that, upon objection, double jeopardy prevents a trial court from rejecting a magistrate's decision in a case involving the termination of parental rights if the magistrate has decided against termination. However, Ohi Juv.. R. 40(E)(4)(b) provides:

> (b) Disposition of objections. The court shall rule on any objections. The court may adopt, reject, or modify the magistrate's decision, hear additional

> evidence, recommit the matter to the magistrate with instructions, or hear the matter itself. ...

The Respondents filed objections to the magistrate's decision in the case involving Petitioner's children. After reviewing the transcript of the hearings before the magistrate, the trial court rejected the magistrate's decision and awarded permanent custody of the children to the Hamilton County Department of Human Services, thereby terminating parental rights.

PETITIONER'S AUTHORITIES DISTINGUISHED

Petitioner clearly raised ineffective assistance of appellate counsel in her previous petition before this Court but now seeks to raise the issue a second time after the denial of her applications for reconsideration and reopening. Petitioner's filing of these meritless applications fails to alter the nature of this case.

Petitioner cites *State ex rel Juv. Dept. v. Geist*, 310 Or. 176, 796 P.2d 1193 (1990) and *State ex rel State Office for Services to Children and Families v. Hammons*, 169 Or.App. 589, 10 P.3d 310 (2000), to establish a right to delayed appeals when ineffective assistance of counsel is alleged. However, these decisions depend upon interpretations of state statutes and fail to support Petitioner's arguments regarding delayed appeals even if the decisions were applicable in this case.

In *Geist*, the Oregon Supreme Court ruled that claims of ineffectice assistance may be raised on direct appeal. *Geist* at 187, 1201. To require a separate process would unnecessarily delay proceedings meant to promote the best interest of children entitled to finality and certainty. *Id.* The court in *Geist* adopted fundamental fairness as the standard in cases alleging ineffective assistance. *Id.* Most importantly, the court explained fundamental fairness as the opportunity to be heard and cited *Matthews v. Eldridge*, 424 U.S. 319, 96 S.Ct. 893 (1976). *Id.* at 190, 1203. The court in *Geist* added, however, that some " ...credible evidence must demonstrate that the termination proceeding was not fundamentally fair." Mere assertions of ineffective assistance do not overcome trial records otherwise supporting the termination of parental rights. *Id.* at 191, 1203-1204.

In *Hammons*, the court relied upon *Geist* to decide that a even a parent with appointed counsel could raise ineffective assistance under a statute that addressed the rights of unrepresented parents. *Hammons* at 594, 313. As to appeals filed beyond statutory timeframes, the court held that parents should not be limited by such timeframes when relying upon counsel to file an appeal. *Id.* at 596, 314.

In the current case, Petitioner seeks to review issues previously before this Court and perpetuate a process that will only add to the uncertainty the children face. Unlike the

appellant in *Hammons,* Petitioner did not rely upon prior counsel to file her appeal for her. Prior counsel's letter to Petitioner clearly stated that his representation of her had concluded. Moreover, the affidavit attached to Petitioner's applications for reconsideration and reopening does not, as noted above, establish that prior counsel's error was the sole cause for her untimely appeal.

Most importantly, Petitioner makes the novel argument that double jeopardy considerations should apply in cases of dependency, neglect, and abuse. This underlying argument hardly qualifies as the evidence *Geist* requires to show that proceedings below were fundamentally unfair.

Petitioner cites *Santosky v. Kramer* , 455 U.S. 745 (1982), regarding the fundamental nature of parental rights. However, this Court in *Santosky* noted that " ...natural parents have no 'double jeopardy' defense against repeated state termination efforts." *Santosky*, at 764.

Petitioner indicates that the holding in *Swisher v. Brady*, 438 U.S. 204 (1978), should apply in the current case. Although *Swisher* did address double jeopardy considerations, it was a case involving Maryland's delinquency system, not cases of dependency, neglect, and abuse. Moreover, *Swisher* held that, even in delinquency cases, trial courts can reject the decisions of magistrates and make "supplemental findings" under statutory schemes that forbid the introduction of any new evidence. *Swisher*, at 219. Similarly, the trial court in the

current case did not hear any new evidence but, instead, reviewed the transcript and rejected the magistrate's decision.

To support the application of double jeopardy in cases of dependency, neglect, and abuse, Petitioner states that *State v. Brown*, 91 Ohio App. 3d 427; 632 N.E.2d 970 (1993), recognized "Miranda" rights in such cases. In fact, *Brown* was a criminal case involving the suppression of evidence.

In short, one can hardly fault previous counsel's failure to raise a novel argument such as the application of double jeopardy in cases of dependency, neglect, and abuse.

Petitioner lists a series of issues including purported violations of the Fourth, Fifth, and Fourteenth Amendments but fails to offer any detail regarding how such rights apply in this case. Petitioner's comments along these lines are meritless. Petitioner also asks the Court to consider the "Ohio Adoption and Safe Families Act". Petitioner apparently refers to recent amendments to O.R.C. 2151.414(D) and (E). The trial court clearly stated, however, that it applied the statutory law as it existed prior to amendment.

CONCLUSION

It is respectfully submitted that Petitioner has wholly failed to sustain her burden of establishing under this Court's Rule 10 there are special and important reasons why the writ should be granted. The decisions below satisfied all

applicable state and federal law.

Respectfully submitted,

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Counsel for Guardian Ad Litem
ProKids, Inc. is a nonprofit corporation existing under the laws of Ohio.

IN THE SUPREME COURT OF OHIO

IN RE:

STEVEN WOOLDRIDGE VICTOR WOOLDRIDGE ROBERT MILLER DUSTIN MILLER	:	Case No. 01-1538
[Lesley Wooldridge, Appellant.]	:	ENTRY

This cause is pending before the Court as an appeal involving termination of parental rights/adoption. Upon consideration of the jurisdictional memoranda filed in this case, the Court declines jurisdiction to hear the case and dismisses the appeal as not involving any substantial constitutional question.

COSTS:

Docket Fee, $40.00, paid by Kevin J. Spiering

(Hamilton County Court of Appeals; No. C000075)

/s/ Thomas W. Moyer
THOMAS W. MOYER
Chief Justice

Filed October 24, 2001

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D.C. 20543

October 9, 2001

Mr. Kevin John Spiering
1700 Fourth and Vine Tower
One West Fourth Street
Cincinnati, OH 45202

Re: Lesley Wooldridge v. Hamilton County Department of Human Services
No. 01-232

Dear Mr. Spiering:

The Court today entered the following order in the above titled case:

The petition for a writ of certiorari is denied.

Sincerely,

/s/ William K. Suter
WILLIAM K. SUTER, CLERK

IN THE SUPREME COURT OF OHIO

IN RE:

STEVEN WOOLDRIDGE VICTOR WOOLDRIDGE ROBERT MILLER DUSTIN MILLER	:	Case No. 01-286
[Lesley Wooldridge, Appellant.]	:	ENTRY

This cause is pending before the Court as a discretionary appeal and a claimed appeal of right. It appears from the court of appeal's opinion that the appeal involves termination of parental rights. The appellant failed to state in the notice of appeal that the appeal involved termination of parental rights as required by S. Ct. Prac. R. II, Sec. 2(B)(1). Furthermore, appellant failed to timely file this appeal within twenty days from the entry of judgment as required by S. Ct. Prac. R. II, Sec. 2(A)(1)(a). Accordingly,

IT IS ORDERED by the Court, sua sponte, that this case be, and hereby is, dismissed.

/s/ Thomas W. Moyer
THOMAS W. MOYER
Chief Justice

Filed March 6, 2001

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

IN RE:		
STEVEN WOOLDRIDGE	:	Appeal No. C-000075
VICTOR WOOLDRIDGE	:	
ROBERT MILLER	:	*ENTRY OVERRULING*
DUSTIN MILLER	:	*APPLICATIONS FOR*
	:	*DELAYED*
	:	*RECONSIDERATION*
	:	*AND REOPENING*

This cause came to be considered upon appellant Lesley Wooldridge's applications for reconsideration and reopening, pursuant to App.R. 26(A) and 26(B), and upon the "reply" of the appellee, the Hamilton County Department of Jobs and Family Services.

We deny the appellant's App.R. 26(A) application for reconsideration, because the appellant filed her application almost six months after the judgment in her appeal had been journalized, and thus well beyond the ten days permitted by App.R. 26(A). We deny the appellant's App.R. 26(B) application to reopen her appeal, because a juvenile court proceeding is a civil action, see *In re Anderson* (2001), 92 Ohio St.3d 63, 67, 748 N.E.2d 67, 69 and App.R. 26(B), by its terms, applicable only to a "claim of ineffective assistance of appellate counsel" in an "appeal from the judgment of conviction and sentence" in a "criminal case".

To the Clerk:

Enter upon the Journal of the Court on 8/7/01

Per order of the Court

/s/ Gorman, J.
Presiding Judge

(COPIES SENT TO ALL PARTIES.)

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

IN RE:		
STEVEN WOOLDRIDGE	:	Appeal No. C-000075
VICTOR WOOLDRIDGE	:	Trial No. F-95-0938
ROBERT MILLER		
DUSTIN MILLER	:	*JUDGMENT ENTRY.*

This appeal, considered on the accelerated calendar under App.R. 11.1(E) and Loc.R. 12, is not controlling authority except as provided in S.Ct.R.Rep.Op. 2(G)(1).

In two assignments of error, appellant Lesley Wooldridge appeals from the judgment of the Hamilton County Juvenile Court awarding permanent custody of her four children to the appellee, Hamilton County Department of Human Services (HCDHS).

In a previous appeal, this court reversed the juvenile court's award of permanent custody and remanded the cause for review of the transcript of the proceedings in connection with the decision whether to reject or modify the magistrate's decision. See *In re Wooldridge* (Aug. 27,, 1999), Hamilton App. No. C-980545, unreported. The juvenile court reviewed the transcript before reaching its January 7, 2000 decision. The transcript is now part of the record certified for review.

Wooldridge's first assignment of error, in which she asserts that the juvenile court erred in reversing the magistrate's decision, is overruled. First, her claim that objections to the magistrate's decision were untimely filed is waived. Wooldridge did not bring this matter to the juvenile court's attention. See *Stores Realty Co. v. Cleveland* (1975), 41 Ohio St.2d 41, 43, 322 N.E.2d 629, 630. Neither did she assign this as error in the initial appeal. Under the doctrine of the law of the case, any subsequent determination by the juvenile court on the issue of timeliness would have exceeded the scope of this court's remand. See *Nolan v. Nolan* (1984), 11 Ohio St.3d 1, 5, 462 N.E.2d 410, 414.

Wooldridge also asserts that the juvenile court erred on the merits in reversing the magistrate's decision. This assignment is overruled, as the court's judgment is supported by some competent, credible evidence going to all the essential elements of the case. See *Myers v. Garson* (1993), 66 Ohio St.3d 610, 614 N.E.2d 742; *C.E. Morris Co. v. Foley Constr. Co.*(1978), 54 Ohio St.2d 279, 376 N.E.2d 578. The record contains sufficient clear and convincing evidence to support the juvenile court's decision. See *In re Adoption of Holcomb* (1985), 18 Ohio St.3d 361, 481 N.E.2d 613; see, also, R.C. 2151.414(D) and 2151.414(E).

Wooldridge's second assignment of error, in which she claims [sic.] the her trial counsel was ineffective for

failing to object to the juvenile court going forward on objections of questionable timeliness, is overruled. After reviewing all the proceedings in the juvenile court, including the difficulty in determining the date upon which the magistrate's decision was filed and the admirable effort by trial counsel presenting Wooldridge's case, we hold that the record does not demonstrate any deprivation of a substantial or procedural right that rendered the trial fundamentally unfair. See Juv.R. 4; *Lockhart v. Fretwell* (1993), 506 U.S. 364, 372, 113 S.Ct. 838, 844; *Strickland v. Washington* (1984), 466 U.S. 668, 693, 104 S.Ct. 2052, 2067; see, also, *In re Murray* (1990), 52 Ohio St.3d 155, 556 N.E.2d 1169.

Therefore, the judgment of the trial court is affirmed. Further, a certified copy of this Judgment Entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

Gorman, P.J., Sundermann and Shannon, JJ.

December 20, 2000

IN THE HAMILTON COUNTY, OHIO
JUVENILE COURT

ENTRY REJECTING MAGISTRATE'S DECISION
& PERMANENTLY COMMITING THE
CHILDREN TO THE HCDHS

IN RE: [illegible]
STEVEN WOOLDRIDGE
VICTOR WOOLDRIDGE
ROBERT MILLER
DUSTIN MILLER

This cause came to be heard upon the remand from the Court of Appeals, First Appellate District of Ohio, Hamilton County, Ohio, case number C98-0560.

Originally, the Magistrate held an evidentiary hearing beginning on 5/2/97 and ending on 10/30/97. The Magistrate's decision issued on 2/26/98 denied the motion of the Hamilton County Department of Human Services (HCDHS) to modify a temporary commitment to a permanent commitment regarding the four children under consideration. Objections were filed by HCDHS and by the Guardian Ad Litem (GAL) for the children. The Juvenile Court Judge at that time rejected the Magistrate's decision and entered an order of permanent commitment to HCDHS for all four children.

Upon appeal by the mother, the Appellate Court reversed the judgment of the Juvenile Court, citing that the Judge had not received a transcript of the hearing held

before the Magistrate and was thus unable to review the testimony underlying the Magistrate's decision.

A transcript has now been prepared and reviewed. The documentary evidence, evaluations, written closing arguments, and the GAL report were also reviewed. Further, the parties presented oral argument to the present Juvenile Court Judge regarding the objections to the Magistrate's decision, which was renewed by the HCDHS and by the GAL for the children.

A review of the record shows that the parents of the four children have all been more concerned with themselves than with their children. Their self-indulgence, sporadic participation in reunification services, and lack of true effort have been demonstrated consistently throughout the four years of involvement with the Department of Human Services. They have continued in their inability to provide a safe, clean, stable, and loving home for their children.

The father of the three youngest children, Victor, Robert and Dustin, is Robert Miller. He professes his love for them yet has not provided them with any stability or support. He has consistently failed to maintain sobriety. He has failed to stop drinking despite numerous services placed before him. He has been in various alcohol and drug programs, but he [sic.] seven DUI convictions, and continues such reckless behavior despite criminal court

appearances and incarcerations. He hopes that the children will wait until he gets out of jail when can resume his custody or relationship with them. However, this desire is not a realistic plan for the children. He was unable to parent the children when he had the opportunity in the past, requiring another removal of the children from the home. He has not maintained steady employment.

Tony Holland, the father of the other child, Steven, has shown absolutely no interest in his child. The mother has not seen him since high school. He has not visited with the child nor provided support in any way. He did not participate in any services and did not attend or participate at the hearing before the Magistrate.

The mother has consistently failed to follow through with the multitude of services provided for her. These services include family preservation and individual therapy. The mother provides many excuses and blames the HCDHS for her own inadequacies. She has never taken any initiative to have her children returned. She has kept a dirty home, failed to provide consistent discipline for her children and has maintained abusive relationships with her boyfriends She has gone off to be with others, leaving her children in the care of her alcohol-prone ex-husband. She has unresolved emotional issues. She has failed to attend drug screens set at her convenience. She has had very unstable housing and has made misstatements and

miscommunicated with authorities. She has demonstrated avoidance of scrutiny of her circumstances by HCDHS. The state attempted to provide all services to her, but she has shown little effort on her part. She has engaged in criminal activity during this time period.

These children are still young enough to be provided with loving and stable adoptive families. For three years now, HCDHS has attempted to return these children to their home. At one time the children were returned home but two emergency removals were necessary within four months. The parents have not followed though with services, simply making excuses or blaming the state. The parents have made no noticeable effort themselves and no noticeable lasting improvement in their situation for their children's sake.

Ohio law in force at the time of the Magistrate's decision allows a certain time (approximately two years) for parents whose children have been adjudged dependent, neglected, or abused and placed under temporary commitment, to improve their situation and correct the deficiencies that occasioned the temporary removal of the child. The case under consideration had reached the maximum time for temporary commitment and the Court was required to decide whether the children should be returned to the parents or permanently committed and placed for adoption, or if adoption is impractical, placed in

Long Term Foster Care. (Now known as Permanent Planned Living Arrangement.)

By law, parents are able to rear their child without state intervention unless the Court in accordance with ORC2151.414(B) finds clear and convincing evidence that it is in the best interest of the children to be permanently committed and that the children should not be placed with their parents.

In determining the best interests of the children, the Court must consider all relevant factors. ORC2151.414(D). as it existed at the time of the filing and hearing, since revised on 3/18/99, set out several specific factors to be weighed.

ORC 2151.414(D) In determining the best interest of the child, the court shall consider all relevant factors, including, but not limited to, the following:

(1) The reasonable probability of the child being adopted, whether an adoptive placement would positively benefit the child, and whether a grant of permanent custody would facilitate an adoption;

(2) The interaction and interrelationship of the child with the child's parents, siblings, relatives, foster parents and out-of-home providers, and any other person who may significantly affect the child;

(3) The wishes of the child, as expressed directly by the child or though the child's guardian ad litem, with due regard for the maturity of the child;

(4) The custodial history of the child;

(5) The child's need for a legally secure permanent placement and whether that type of placement can be achieved without a grant of permanent custody to the agency.

The children are still young, now ages 10, 9, 8 and 6 years old. (They were all approximately one and a half years younger at the time of the Magistrate's hearing.) They are readily adoptable and there were a number of potential adoptive homes that would consider multiple siblings the race and gender of these children. The children need permanency and could possibly be reunited in an adoptive home though separated in foster homes. Permanency in adoption into a stable and loving family would benefit these children. A permanent commitment is required before the children may be adopted.

The children love their parents and the loss of interaction with them will naturally be emotionally difficult. The children have made adjustments to their foster homes in varying degrees, but all of the children are [sic.] in improving in behavior, school, and emotional outlook. The children are also bonded to their foster families. The children wish to go home, but have adjusted to foster care

where they have remained a long time. The GAL for the children strongly advocates that the children be permanently committed.

These children were removed from their home in emergency circumstances on June 12, 1995, when the mother found herself overwhelmed, one father was incarcerated and the other father was not interested in the family. The children were returned to the home in December 1995 and within four months were removed for a weekend, then returned. A few weeks later, on April 3, 1996, they were again removed from the home and placed in foster care. At this time the children have only been home for four months of the past four and a half years (approximately three years at the time of the Magistrate's hearing.) The only method to secure an adoptive placement for the children is through a grant of permanent commitment to HCDHS.

In addition to best interest, the Court in determining a motion for permanent custody must also find that the children cannot be placed with their natural parents within any reasonable period of time or should not be placed with them. The guidance for this determination is found in ORC2151.414(E), as it existed at the time of the filing and hearing, since revised on 3/18/99, which allows the Court to consider all the evidence, but focused on eight provisions that, if found, would require permanent commitment.

ORC2151.414(E) In determining at a hearing... whether a child cannot be placed with either parent within a reasonable period of time or should not be placed with the parents, the court shall consider all relevant evidence. If the court determines, by clean and convincing evidence... that one or more of the following exists as to each of the child's parents, the court shall enter a finding that the child cannot be placed with either parent within a reasonable time or should not be placed with either parent:

(1) Following the placement of the child outside the child's home and notwithstanding reasonable case planning and diligent efforts by the agency to assist the parents to remedy the problems that initially caused the child to be placed outside the home, the parent has failed continuously and repeatedly for a period of six months or more to substantially remedy the conditions causing the child to be placed outside the child's home. In determining whether the parents have substantially remedied those conditions, the court shall consider parental utilization of medial, psychiatric, psychological, and other social and rehabilitative services and material resources that were made available to the parents for the purpose of changing parental conduct to allow them to resume and maintain parental duties;

(2) The severe and chronic mental illness, severe and chronic emotional illness, severe mental retardation, severe psychical disability, or chemical dependency

of the parent makes the parent unable to provide an adequate permanent home for the child at the present time and in the foreseeable future;

(3) The parent committed any abuse... against the child, caused the child to suffer any neglect... between the date that the original complaint alleging abuse or neglect was filed and the date of the filing of the motion for permanent custody;

(4) The parent has demonstrated a lack of commitmen: toward the child by failing to regularly support, visit, or communicate with the child when able to do so, or by other actions showing an unwillingness to provide an adequate permanent home for the child;

(5) The parent is incarcerated for an offense committed against the child or a sibling of the child;

(6) The parent is incarcerated at the time of the filing of the motion;

(7) The parent is repeatedly incarcerated...;

(8) The parent for any reason is unwilling to provide food, clothing, shelter, and other basic necessities for the child or to prevent the child from suffering physical, emotional, or sexual abuse or physical, emotional, or mental neglect.

The parents have not remedied the situation that led to the removal of the children. The parents still have significant emotional illness, chemical and alcohol dependencies, housing inadequacies, inability [sic.] to

adequately provide parental control of their children, continued immaturity, and dependence upon the State. When the children were at home, they were frequently out of control. They were truant, dirty, sick and unkempt. This situation resumed when the children were returned to the home. They moved in with the mother into a home with her violent, aggressive and hostile boyfriend. At least one child observed his mother in sexual activity and exhibited sexual acting out in school. There has been a multitude of services provided for the parents, including psychological evaluations, therapies, medication, counseling, housing assistance, etc. Despite the services offered, most services were only half-heartedly attended or skipped. Mother did not appear for urine screens that were set at her convenience and did not communicate with HCDHS when it did not suit her needs. It cannot be said from the evidence presented in this case that the parents have substantially complied with the goals of the reunification plan.

The mother has severe and chronic emotional illnesses. She has been in psychiatric hospitalization. Her chemical dependency cannot be assessed due to her failure to provide urine samples. The father Robert Miller is an alcoholic with severe consequences.

The children were returned home, and within four months, they were so poorly supervised that it was

necessary for them to be removed twice and replaced in foster care.

The father Tony Holland has totally demonstrated his non-interest in his child and family. The father Robert Miller and the mother both have shown a lack of commitment and follow-through toward the services provided. They have not provided financial support for their children. Two of the parents have, with some exception, regularly visited with the their children though there were frequent visitation problems.

None of the parents was incarcerated for harming their children, however, the mother was charged with child endangerment at the time of the Magistrate's hearing. Also the mother was incarcerated on several warrants during the period of temporary commitment. The father Robert Miller has been repeatedly incarcerated and was in long term incarceration at the time of the Magistrate's hearing. The father Tony Holland is totally unwilling to provide for his child or the family. The father Robert Miller and the mother voiced their willingness to provide for their children but have not followed through with true effort on their part and have not fulfilled their promises.

Considering the statutory factors as analyzed with the evidence presented, it is clear and convincing that it is in the best interest of these children to be permanently

committed and placed for adoption. The children cannot be placed with either of their parents within a reasonable time and should not be placed with either of their parents.

Therefore, the Magistrate's decision is rejected and the children are permanently committed to the custody of the HCDHS, thereby terminating any and all parental rights.

In accordance with ORC2151.419 the Court finds that HCDHS has made reasonable efforts to eliminate the need for continued removal from the children's home and to make it possible for the children to return safely home, but that the parents did not fully avail themselves of the HCDHS efforts.

/s/ Thomas R. Lipps, Judge

1-7-2000

IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO
JUVENILE COURT

IN RE: : Case No. F95-0938Z
STEVEN WOOLDRIDGE
VICTOR WOOLDRIDGE
ROBERT MILLER
DUSTIN MILLER

DECISION TERMINATING TEMPORARY COMMITMENT AND REMANDING CUSTODY TO MOTHER

Procedural Posture

This matter is before the Court pursuant to a Motion to Modify Temporary Commitment to Permanent Commitment filed by the Hamilton County Department of Human Services (hereinafter HCDHS) on March 4, 1997. Evidentiary hearings were conducted on May 29, and October 30, 1997. (Hearings scheduled for June 9 and July 29, 1997, unable to proceed as Father was not transported from the jail to be present for the proceedings.) Closing arguments were submitted in writing on November 17, 1997.

A prior disposition of temporary commitment was granted by this Court on September 7, 1995, and was terminated with a remand of custody to the Mother pursuant to court ordered protective supervision on March 11, 1996. A new complaint was filed by HCDHS on April 3,

1996, and a new temporary commitment was granted to HCDHS on July 2, 1996.

Findings of Fact

The underlying issue resulting in the removal of the children from the Mother in 1995 and again 1996 was Mother's emotional inability to provide for the care of her four young boys manifest in inadequate supervision and structure for the children and insufficient housekeeping. HCDHS had started working with Mother in 1994 and had her evaluated by Dr. Lipari and Dr. Eunice Van Cobb in April, 1994. At that time, they found the Mother to have no Axis I diagnosis, a dependent personality disorder on Axis II and above average intelligence. An assessment of her parenting revealed "adequate knowledge of her children's histories, daily activities, health care and nutritional principles, and disciplinary techniques." The assessors further found that her "difficulty following through with the correct behaviors... may be related to issues of codependency and generally being overwhelmed with the responsibilities of four young children." Individual therapy and family preservation services were recommended and were arranged. The report from the Family Preservation worker, Leah Jackson, dated June 1, 1994, found Mother to have been "very open and receptive to Family Preservation Services." She met "consistently" with the worker and "made significant progress toward meeting her goals"

including enrollment in the University of Cincinnati, volunteer work at the YWCA and enrollment of the children in day care. All goals were met by the conclusion of the Family Preservation except for the securing of more appropriate housing. Further, despite an intervening criminal charge of child endangering for leaving the children home alone for a brief time, Ms. Jackson described the Mother as "a very loving and caring parent...well bonded to her children." The therapist, Carolyn Dell'Alba, reported that Mother only kept three counseling appointments which had been scheduled by the Mother to help her deal with the stress of managing college, children and her home. During the period of the therapy, Mother did secure better housing and then discontinued therapy. On May 2, 1995, Mother signed a Voluntary Agreement for Care to allow the children to be placed in foster care as she felt overwhelmed by their care.

HCDHS again referred Mother for a psychological evaluation which was completed in July, 1995, by Dr. Kim Stookey. Mother was then diagnosed with a dysthymic disorder on Axis I and a Dependent Personality Disorder on Axis II. According to the evaluator, Mother had a "generally adequate understanding of her child's history and activities of daily living. Similarly, her understanding of appropriate health and nutritional care principles for children appears to be adequate." Her difficulty in managing the behavior of the boys was, in the opinion of the

evaluator, partly attributable to the "heightened activity levels of her children which caused her to feel overwhelmed. The Mother was also found to be of above average intelligence and was enrolled in the University of Cincinnati at the time of the evaluation. There was no finding of substance abuse by the Mother. Dr. Stockey recommended that Mother be referred for individual therapy and possible psychotropic medication for her depression.

Mother did engage in counseling and was consistent in her visitation as per the reports submitted and the evidence presented as reflected in the Court's entry of November 16, 1995. Mother also had stable housing and had obtained employment. Mother had not received any services to assist her in managing the children and two of the children had been in three different foster homes as a result of their behaviors. The children were returned to Mother on December 22, 1995.

In home family therapy began upon the return of the children. Shortly after the return of the children, Mother terminated her employment and changed her residence to move in with her boyfriend and his three children. The therapist, Yolanda Ford, in a report submitted to the Court by ProKids on February 26, 1996, described the relationship between the boyfriend's children and Mother's children, the subject of the action herein, as "hostile, aggressive, and

violent" which "triggered intense stress for Ms. Wooldridge." Due to continuing problems in the home of the boyfriend, HCDHS provided Mother with assistance to move to her own apartment with her children, but the care of the apartment and the children deteriorated. Mother did not send the children to school regularly and they were frequently left in the care of Father, Mr. Miller, despite his severe alcoholism which was known to Mother. Mother also became inconsistent with her individual therapy and stopped coming at the end of January, 1996, as per the report of February 16, 1996, from her therapist, Ms. Pederson (a student intern at the time of her treatment of Mother). Ms. Pederson also reported that the Mother "has the ability to benefit from psychotherapy...(but) will continue to choose relationships which are not in her best interest or in the best interests of her children unless she gets help." Nevertheless, HCDHS filed a Motion to Terminate Temporary Commitment and Award Custody to Mother and For Protective Orders of Supervision on February 28, 1996, which was granted by agreement of the parties as per entry of March 11, 1996.

A new complaint was filed on April 3, 1996, as a result of Mother again becoming so overwhelmed that she sought admission to the psychiatric unit at University Hospital. Two days earlier she had been arrested for an earlier change of passing bad checks when she sought the help of a police officer to locate one of the children who had

run out of her control at the Forest Fair Mall. Also, based upon statements made by Mr. Miller to the HCDHS caseworker, it was alleged that Mother was drinking and using drugs. A substance abuse assessment was arranged by HCDHS and the report of May 24, 1996, reflected no symptoms and no diagnosis. Although weekly urine screens were recommended, there was no finding of usage or a need for substance abuse treatment. Rather, the substance abuse assessment recommends "individual therapy for relationship, low self-esteem, and women's issues."

Since the temporary commitment was ordered on July 2, 1996, reports reflect that Mother attended parenting at Family Services from June 5 – August 21, 1996. In a report dated July 17, 1996, which was submitted to the Court, Mother was described as "an active participant. She shares feelings and ideas appropriately. Lesley has taken some responsibility for her behaviors and the removal of her children. She has shared her ideas re the importance of being with your kids as opposed to having things."

In a review hearing conducted on September 10, 1996, the evidence presented was that Mother had obtained independent housing, was attending school, and was working part-time. She attended a psychiatric assessment on July 3, 1996, and was again diagnosed with "major depression, recurrent, mild" and prescribed prozac and

trazodone. However, she did not maintain her therapy appointments after the first session. She was consistent with her visits with her children which HCDHS wanted to restrict due to allegations that Mother had told the boys that they would be returning home. At the time of these visits, reunification was, in fact, the plan and the restriction was denied.

It was also reported that Mother continued to have difficulty controlling the children's' behavior during the visits and a family aide was offered to assist and guide Mother during the visits.

Mother was also referred for a third psychological evaluation by a third psychologist. In his report of November 17, 1996, Dr. Kelly diagnosed Mother as suffering from major depression and cannabis abuse on Axis I based upon a single positive urine screen at some unspecified time in the past and Mother's self reporting of having used marijuana to counteract the psychotropic medication she had been prescribed, neither of which she was continuing to take. It is noteworthy that this psychological evaluation, in contrast to the two prior assessments, relates more information provided by the HCDHS caseworker including secondhand hearsay from Mr. Miller than direct statements and observations from the Mother who was in the psychologist's presence. Again, this assessor recommends individual and family therapy for Mother and does not rule

out reunification "depending upon her compliance and investment in the therapeutic process."

As Mother moved to Kentucky during the late summer, HCDHS asked for an evaluation of her home through the interstate Compact Office which was unknown to the Court at the time of the referral and for reasons which are as yet unclear to the Court. The home was "not approved" by the Kentucky Cabinet caseworker as Mother had no income, inadequate space for four children, and had not completed the HCDHS "service plan" including the completion of "parenting education" and "written statements from mental health professionals." The parenting had, in fact, already been completed through Family Services as per above and the size of the house at the time of investigation on November 11, 1996, was not a relevant factor as return was not yet imminent after less than four months under the orders of temporary commitment. If the home was being investigated for visitation, the number of bedrooms was irrelevant as the visits were not overnight. Finally, whether or not the Mother had successfully completed the reunification plan was not a decision for an investigator in Kentucky who had one contact and limited knowledge of the case.

The evidence presented in the evidentiary hearings on May 29, and October 30, 1997, pursuant to the Motion to Modify, reflected that Mother made 4 of 18 urine screens

since April, 1996, with one positive for marijuana in September, 1996. There was no other evidence of any substance abuse problem observed or diagnosed to date as per the reports discussed above. Mother has been regularly engaged in therapy since June, 1997, with Jack Richter, a veteran therapist at Northern Kentucky Comprehensive Care. Mr. Richter testified that Mother is scheduled to come every other week and that she attended nine of thirteen scheduled sessions. Three of the sessions she missed were attributable to a fire which destroyed her home but she returned after getting stabilized. Further, Mr. Richter found no evidence of any depression and no evidence of any substance abuse. He also testified that she was in a stable relationship with a good man. Finally, Mr. Richter testified that Mother "impressed him as a person who was fairly knowledgeable about parenting" and he found her to be intelligent and eloquent.

On October 30, Mother testified that she was employed at Thriftway. She was involved in a stable relationship with a man who was employed and to whom she was engaged. She has stable housing with four bedrooms, enough to accommodate all of the children. She attends church on Wednesdays and Sundays and has the support of her therapist and friends. Even Father testified that Mother was with a "better crowd" and seemed to be more stable now than in the past. It was the Court's observation that Mother appeared more self-assured,

eloquent, calm and insightful than she had throughout the two years of court involvement.

Mother continues to visit with her children regularly although the HCDHS caseworker testified that there are problems scheduling the visits regularly to accommodate Mother's work schedule. She also complained about Mother not being "in reality" because Mother told the children that they would be coming home to her and that they would move to Tennessee, get a house, and go fishing together. With regard to drug screens, the case worker acknowledged that Mother asked to take the drug screens in Kentucky as she had to take two buses to Cincinnati to get to the testing center. However, the caseworker maintained that the only available provider for the service was in Cincinnati. Although Mother had also done a drug test for her employer in Kentucky, HCDHS did not request those results.

With regard to the Father, Robert Miller, the evidence is clear and convincing that he is a chronic alcoholic with little chance for rehabilitation. He was incarcerated throughout most of the proceedings herein and since the inception of the case in 1995 for alcohol related convictions including his third driving under the influence in five years and his seventh such conviction. He has been through numerous treatment programs and is currently in the Dayton Human Rehabilitation Center. Family

Preservation worked with Father prior to the removal of the children but he was unable to continue involvement due to his severe alcoholism. According to the testimony of the Family Preservation worker, HCDHS, and his mother, Father loves his children very much and tries hard to parent them but has been unable to do so. Father continues to hope for reunification after his discharge from the treatment program which date is uncertain.

The father of Steven, Tony Holland, failed to participate in the proceedings and has had no involvement with the child since his birth.

The children, ages 4, 6, 7, and 9 years of age, are in two different foster homes. Ms. Dell'Alba, the therapist who has been working with the older children since June, 1997, testified that the children would be "detrimentally impacted by not going home to Mother." She also testified that Robert has been diagnosed with ADHD, that he is receiving play and art therapy as well as good supervision and structure in the foster home and that his behavior is under control. This description was in sharp contrast to the report by Dr. Berrens who conducted a psychoeducational evaluation in March, 1997, and found the child to be "impulsive, inattentive and other inappropriate behaviors " (HCDHS Exhbit 6).

Ms. Dell'Alba also testified that Steven's behaviors have stabilized and he is not in need of additional treatment.

In a psychological evaluation of Steven conducted by Dr. Bennett-Powell in November, 1995, when the child was first placed in foster care, he was found to be a "fairly well-adjusted child" with "overall intelligence in the superior range." The psychological conducted in April, 1997, by Dr. Kelly, also found no problems requiring treatment. (HCDHS Exhibit 4)

Victor was assessed by CCDD and in a report of January 10, 1997 (HCDHD Exhibit 8) was found to be "mildly deficient in a number of areas...suggestive of difficulties that are secondary to behaviors." No medication was recommended at this time but a structured educational setting and "family counseling to facilitate behavior management" were recommended.

No special needs were noted regarding the youngest child and no evaluations were presented.

The plan presented by the agency for permanency for the children was placement for adoption. Neither of the foster parents were interested in adopting the children and there are no relatives interested in custody or adoption. No adoptive families have been specifically identified for any of the children.

Conclusions of Law

Pursuant to Ohio Revised Code Section 2151.414, the Court must determine by clear and convincing evidence that the children cannot be placed with either of their parents within a reasonable period of time or should not be placed with their parents, and that it is in the best interest of the children to permanently terminate parental rights.

Based upon the evidence presented as set forth herein, the Court finds the evidence to be clear and convincing that the Mother has substantially improved her situation. She is no longer diagnosed as depressed and has maintained a significant therapeutic relationship since June, 1997. Since the time the temporary commitment was ordered, she has been able to cope with a fire which destroyed her house, her arrest on a criminal charge, and the constant discouragement regarding the return of her children without becoming overwhelmed. She has been consistent in her visitation with her children throughout their placement in foster care. She completed a parenting class and has repeatedly been determined to have adequate knowledge of parenting skills. Although there are still concerns about her ability to deal with the difficult behaviors of the children and especially Robert, the evidence is also clear that he suffers from ADHD and has been difficult for both the foster parent and the school to manage. In sum, Mother appears to have achieved the

emotional stability which was previously lacking and which caused the removal of the children.

The Father, Robert Miller, has yet to be tested regarding his commitment to sobriety. Although he has been incarcerated and in treatment for many months, he has not been able to maintain sobriety and stability in the community for more than two years during the last twenty years. Although he clearly loves all of the children, it is not likely that he will be able to provide care for them on his own in the reasonably near future. Further, it is clear that he and Mother will not resume their relationship when he is released from incarceration.

Finally, the evidence is clear and convincing that permanent commitment is not in the children's best interest. They have already been separated from each other in foster care and moved numerous times throughout their time in foster care. The plan of HCDHS is to move them again at some unspecified time to one or more unknown homes with a permanent separation from their Mother to whom they are closely bonded and want to return. As the therapist for Robert and Steven testified, not returning to their Mother would be "detrimental" to the children.

Wherefore, the Court finds the evidence to be insufficient to support the Motion to Modify the Temporary Commitment to Permanent Commitment. As Mother has

substantially completed the goals of the reunification plan and as Father is not currently available or appropriate to resume custody, the Court hereby terminates the temporary commitment previously granted herein and remands custody to the Mother, Lesley Wooldridge. HCDHS will ensure that all school and medical records are transferred and will facilitate the arrangement of continuing services including therapy or an ADHD support group to address Robert's needs, and day care or preschool for the youngest children if requested by the Mother.

/s/ Magistrate D. Kamine

February 4 or 6, 1998

JEROME P. STINEMAN
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December 21, 2000

Leslie [sic.] Wooldridge
324 W. 8th St.
Newport, KY 41071

Re: Appeal – Wooldridge & Miller Children
Case No. C000075

Dear Ms. Wooldridge:

Enclosed is a copy of decision of the Court of Appeals upholding the trial court's decision to grant permanent custody of your children to HCDHS. The appeal on which I was appointed is now concluded. If you wish to proceed with a further appeal of the above matter you need to contact the Supreme Court of Ohio as my representation was only for the Court of Appeals for the First District.

***

You must act promptly as you have 45 days from December 20, 2000 within which to appeal.

/s/ Very truly yours,
Jerome P. Stineman

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

IN RE:		
STEVEN WOOLDRIDGE	:	Appeal No. C-000075
VICTOR WOOLDRIDGE	:	Trial No. F-950938
ROBERT MILLER	:	
DUSTIN MILLER	:	*AFFIDAVIT OF*
	:	*APPELLANT*
	:	*LESLEY*
	:	*WOOLDRIDGE*

County of Hamilton)
State of Ohio) ss:

I, Lesley Wooldridge, being first duly cautioned and sworn do hereby state as follows:

1. I am the appellant in this cause, in which I am seeking to regain custody of my children in this termination of parental rights case.
2. Attorney Jerome P. Stineman, Ohio Supreme Court Registration #0053409, represented me in this appeal.
3. Attorney Stinemen provided me with ineffective assistance of counsel for the following reasons.
4. On December 20, 2000, this Court affirmed the awarding of permanent custody of my four children to the appellee, Hamilton County Department of Human Services (HCDHS), and journalized its entry on that date.
5. On December 21, 2000, attorney Stineman advised me that I have "45 days from December 20, 2000 within which to appeal" to the Ohio Supreme Court. Attached as Exhibit "A-1" is a copy of that letter.
6. Effective April 1, 2000, the Supreme Court of Ohio amended its Rules of Practice wherein S.Ct.Prac.R. II, § 2(A)(1)(a) now provides that to institute and perfect an appeal involving termination of parental rights from the court of appeals, the appellant shall file the notice of

appeal in the Supreme Court within 20 days from the entry of judgment being appealed.

7. Under the superceded Rules of Practice in the Supreme Court of Ohio, I would have had 45 days within which to institute and perfect this appeal to the Ohio Supreme Court.

8. Under the new law, I had until January 9, 2001 within which to institute and perfect my appeal of this case to the Ohio Supreme Court.

9. Under the old law, I had until February 5, 2001 within which to institute and perfect my appeal of this case to the Ohio Supreme Court.

10. At all times I acted and relied upon attorney Stineman's representations.

11. On January 26, 2001, I discovered through different counsel that the true time period to institute and perfect my appeal, January 9, 2001, had expired.

12. On February 5, I filed a notice of appeal to the Ohio Supreme Court in an attempt to institute and perfect my appeal.

13. On February 10, 2001, attorney Stinemen wrote a letter to new counsel, wherein he states that "I failed to correct the time within which to appeal as the form of the letter used predated the change from 45 to 20 days for termination of parental rights cases." Attached as Exhibit "A-2" is a copy of that letter.

14. On March 6, 2001, the Ohio Supreme Court dismissed my appeal because I did not file this appeal within 20 days from the entry of judgment of this Court. Attached as Exhibit "A-3" is a copy of the Ohio Supreme Court Advance Sheet that depicts dismissal of my appeal.

15. I also believe attorney Stineman provided ineffective assistance of counsel for the reasons in my motion to reopen this case.

16. I have been prejudiced by attorney Stineman's advice and counsel, and but for his errors this case and appeal the results would have been favorable to me.

17. Further, affiant sayeth naught.

/s/ Lesley Wooldridge

Sworn to before me and subscribed in my presence this 9th day of May, 2001.

/s/ Kevin J. Spiering
Notary Public